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07-214

IN THE CIRCUIT COURT OF THE  
12TH JUDICIAL CIRCUIT IN  
AND FOR SARASOTA COUNTY,  
FLORIDA

K.B. and L.B., adoptive parents of C.B.  
Plaintiffs,

vs.

FLORIDA HOME STUDIES AND ADOPTION, INC. :  
Defendant. :

CASE NO. \_\_\_\_\_

2010 CA 11125 NC

**COMPLAINT**

COME NOW the Plaintiffs, K.B. and L.B., adoptive parents of C.B., by and through undersigned counsel, and hereby sue the Defendant, FLORIDA HOME STUDIES AND ADOPTION, INC. and state as follows:

**JURISDICTION**

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of attorney's fees, interests, or costs.

**THE PARTIES**

2. Plaintiffs, K.B. and L.B., are sui juris adults and, at all times material hereto, were residents of Sarasota County, Florida.

3. C.B., whose date of birth is July 23, 2002, is the adoptive son of K.B. and L.B. and resides in Sarasota County, Florida.

4. Due to the nature of the allegations set forth herein below, K.B. and L.B. are filing this action using pseudonyms.

5. At all times material hereto, FLORIDA HOME STUDIES AND ADOPTION, INC. (hereinafter "DEFENDANT"), was a licensed child placing agency organized and existing

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under the laws of the State of Florida with its principal place of business in Sarasota County, Florida.

### **GENERAL ALLEGATIONS**

6. DEFENDANT is an international adoption agency, which must comply with the adoption laws of the State of Florida.

7. In February 2005, Plaintiffs, K.B. and L.B., executed an adoption and home study application with DEFENDANT requesting to adopt a healthy child, age 2-4, from Guatemala or Taiwan.

8. Plaintiffs' adoption home study application specifically indicated that they would not be interested in adopting a special needs child.

9. On or about February 16, 2005, DEFENDANT conducted a home study on Plaintiffs, K.B. and L.B., which also indicated that Plaintiffs had no intention of adopting a special needs child.

10. DEFENDANT approached K.B. and L.B. about adopting a child from Guatemala.

11. In February 2006, after learning that C.B., became available for adoption, Plaintiffs, K.B. and L.B., agreed to adopt a minor child from Guatemala through the use of DEFENDANT's services.

12. DEFENDANT was aware of the high risks involved in adopting children from Guatemala and never informed Plaintiffs, K.B. and L.B. of these risks.

13. DEFENDANT falsely reported that C.B. was a healthy four-year-old child with no special needs.

14. DEFENDANT failed to properly advise Plaintiffs, K.B. and L.B., of C.B.'s extensive special needs prior to finalizing the adoption.

15. DEFENDANT failed to report that C.B.'s biological mother had severely sexually abused C.B. and had exposed him to a life of prostitution and drugs.

16. DEFENDANT failed to report that as a result of the abuse C.B. sustained prior to adoption, he exhibits aggressive behaviors, sexually reactive behaviors, and attachment disorders which must continuously be monitored and addressed both at school and at home.

17. DEFENDANT failed to report that C.B. suffers with serious psychological and psychiatric needs requiring a lifetime of extensive treatment.

18. On or about March 17, 2006, Plaintiffs, K.B. and L.B., executed a referral acceptance letter to adopt C.B.

19. In late November 2006, DEFENDANT, by and through its agents, placed C.B. with his adoptive family.

20. In or around January 2007, C.B. began displaying aggressive behaviors, having nightmares, and engaging in sexually oriented conversations and behaviors.

#### **COUNT I- NEGLIGENCE**

21. Plaintiffs hereby reaver and reallege paragraphs 1 through 20 as if fully set forth herein.

22. DEFENDANT, through its agents and employees, owed the PLAINTIFFS the following duties:

a. To include in the adoption home study "[a]ny special characteristics or limitations of [K.B. and L.B.] regarding children placed for adoption in their home" pursuant to Florida Administrative Code Rule 65C-15.028;

b. To "thoroughly assess the suitability and eligibility of prospective parents with the understanding that some clients may not be appropriate for . . . the challenges inherent

in the adoption of children with special needs. Based on the assessment, the home study document shall include a recommendation as to the nationality, age range, medical condition, and special circumstances of the child to be placed” pursuant to JCSIS Standards of Practice;

c. To provide “a minimum of 10 hours of pre-adoption education . . . which goes beyond that provided during the home study but not including meetings with the agency or social workers in preparation for the home study. The pre-adoption education will include the legal, medical, institution, psychosocial, attachment and cultural issues that affect all adoptions” pursuant to JCSIS Standards of Practice;

d. To disclose the known risks, based upon Defendant’s experiences with Guatemalan adoptions, inherent in adopting children from Guatemala and the abuse faced by children in the Guatemalan foster care system including that;

i. Prior to the adoption, the child was placed in a foster home in Guatemala placing him at high risk of physical and sexual abuse;

ii. Guatemalan foster care providers are not regulated or checked by the Guatemalan government for compliance with any standards;

iii. There were instances of grossly inadequate care for young children in foster home situations in Guatemala;

iv. Public oversight of Guatemalan foster homes was minimal;

v. Prior to the adoption, there were cases in which American adoptive families who have completed a Guatemalan adoption later learned that the foster care provider or others in the household had physically or sexually abused the children;

vi. Monetary incentives and high fees drive completion of the adoptions in Guatemala more than protecting the children, the birth parents, and the prospective adoptive parents;

vii. Adopting a child from a system that is based on conflict of interest and that unduly enriches facilitators, such as that established in Guatemala, is a very uncertain proposition with potential serious life-long consequences;

viii. At the time of C.B.'s adoption, Guatemala had at least a five year history of serious issues concerning adoption because the Guatemalan adoption system was fraught with corruption and the lack of governmental regulation creating risks to children and parents;

e. To disclose facts known to DEFENDANT that were pertinent to the State Department's decision not to approve DEFENDANT for Hague Convention Adoptions;

f. To prepare K.B. and L.B. for placement of C.B. by including "information about the child's background and birth family" pursuant to Florida Administrative Code Rule 65C-15.029;

g. To conduct a study of C.B. which included "all available social and medical history," developmental history, family history, personality traits of the child, "actual or potential impact of past abuse, [p]sychological or psychiatric evaluations of child known or suspected of having mental health problems," and complete physical examination when matching and placing the adoptive child pursuant to Florida Administrative Code Rule 65C-16.002(7);

h. To incorporate into the adoption placement process the "[p]resentation of the information to the family regarding the child" pursuant to Florida Administrative Code Rule 65C-16.009;

i. To provide K.B. and L.B. with “[a]ll nonidentifying information, including the family medical history and social history of [C.B.] and [his] birth parents . . . before the adoption” was finalized pursuant to Florida Statutes § 63.162(6).

j. To “[p]rovide to prospective adoptive parents all information received to date and allowed by law pertaining to children eligible for international adoption [including] medical, social, legal, and psychological and/or developmental information” pursuant to JCSIS Standards of Practice;

k. To provide K.B. and L.B. with “all available information by the date of the final hearing on the petition for adoption. The information to be disclosed includes: 1) a family social and medical history form . . . , 2) [t]he biological mother’s medical records . . . , 3) [a] complete set of the child’s medical records documenting all medical treatment and care since the child’s birth and before placement, 4) [a]ll mental health, psychological, and psychiatric records, reports, and evaluations concerning the child before placement, 5) [t]he child’s educational records” pursuant to Florida Statutes § 63.085(2)(a);

l. To “comply with all applicable adoption laws of [C.B.’s] country of origin and the State of Florida” pursuant to Florida Administrative Code Rule 65C-15.036(2).

23. DEFENDANT breached its duty in that:

a. the home study, which indicated that PLAINTIFFS did not seek to adopt a child with special needs, did not address the ability of PLAINTIFFS to care for a child with special needs and to thoroughly assess the suitability and eligibility of the prospective adoptive parents pursuant to Florida Administrative Code Rule 65C-15.028 and the JCSIS Standards of Practice;

b. PLAINTIFFS did not receive the minimum required ten hours of pre-adoption education beyond that provided during the home study pursuant to JCSIS Standards of Practice.

c. PLAINTIFFS were not provided with relevant information pertaining to C.B.'s special needs and family history prior to the finalization of the adoption pursuant to Florida Administrative Code Rule 65C-15.029.

d. DEFENDANT did not disclose risks inherent in adopting C.B. from Guatemala and the abuse faced by C.B. in Guatemala and further did not disclose that:

i. Upon C.B.'s acceptance into the Guatemalan foster home, he appeared to be malnourished and suffered from head lice;

ii. C.B. had been previously taken to a hospital in Antigua, Guatemala, and it was confirmed that he was malnourished;

iii. C.B. previously lived in a brothel, and was exposed to a life of prostitution and drugs prior to being placed in the foster home;

iv. C.B. was a victim of physical and/or sexual abuse;

v. C.B. had severe psychological, psychiatric, and behavioral needs requiring a lifetime of extensive treatment;

vi. The school officials in Guatemala suggested that C.B. be seen by a psychologist;

e. DEFENDANT failed to disclose facts known to DEFENDANT that were pertinent to the State Department's decision not to approve DEFENDANT for Hague Convention Adoptions, accelerated the adoption of C.B. to avoid the Hague Convention

regulations, and were subsequently not approved for accreditation of Hague Convention adoptions;

f. DEFENDANT failed to completely disclose C.B.'s known history of sexual abuse, sexual behaviors, and extensive psychiatric and psychological needs to ensure that C.B. was matched with a prospective adoptive home that would meet his special needs pursuant to Florida Administrative Code Rules 65C-16.002(7), 65C-16.009; Florida Statutes §§ 63.085(2)(a), 63.162(6) and the JCSIS Standard of Practice;

g. Despite being advised by school officials that C.B. had a need for psychological services, DEFENDANT withheld these services from the child and failed to discuss such recommendation with the adoptive parents, K.B. and L.B.;

h. DEFENDANT failed to provide a complete medical history of the child pursuant to Florida Statutes § 63.085(2)(a) in that DEFENDANT initially sent child to one pediatrician and thereafter to another who reported only the measurements and vaccines of the child, disregarding all development and social needs;

i. DEFENDANT did not comply with the laws of Florida when facilitating this international adoption pursuant to Florida Administrative Code Rule 65C-15.036(2).

24. DEFENDANT further breached its duty pursuant to Florida Administrative Code Rules 65C-16.002(7) and 65C-16.009 and Florida Statutes §§ 63.085(2)(a) and 63.162(6), in that the study of C.B. and the information provided to K.B. and L.B. did not include the aforementioned social, medical, developmental, educational, and family history.

25. As a result of DEFENDANT's negligence and other unreasonable conduct, the adoptive parents, K.B. and L.B., sustained damages including, but not limited to, mental anguish, loss of capacity for the enjoyment of life, expenses of psychiatric and psychological therapy, loss



of the ability to earn money, and the unnecessary, inappropriate delay in treating the conditions of C.B., thereby compounding the situation and depriving K.B. and L.B. of what otherwise would have been a more normal existence. The losses are permanent and continuing and the Plaintiffs will continue to suffer the losses in the future.

WHEREFORE, Plaintiffs demand judgment for damages against Defendant for compensatory damages, costs, and all other such relief as the Court may deem just and proper.

**COUNT II WRONGFUL ADOPTION BASED UPON NEGLIGENT  
MISREPRESENTATIONS BY FLORIDA HOME STUDIES AND ADOPTION, INC.**

26. Plaintiffs hereby reaver and reallege paragraphs 1 through 20, as if fully set forth herein.

27. At all times material hereto, DEFENDANT had a duty to fully and completely disclose all information and records it had concerning C.B.

28. At all times material hereto, DEFENDANT had a duty to fully and completely disclose C.B.'s psycho-social histories, the behavioral status and behavioral predictors of C.B., and his psychiatric and mental health history, and to comply with the provisions of the Florida Statutes and the Florida Administrative Code, including, but not limited to: §§ 63.039, 63.085, and 63.125, Florida Statutes, and Rules 65C-15.028, 65C-15.029, 65C-15.031, 65C-16.002, 65C-16.009, 65C-16.010, and 65C-16.013, Florida Administrative Code, so that the suitability for adoption could be reasonably considered on a fully informed basis by the adoptive parents, K.B. and L.B.

29. Notwithstanding, during the pre-adoption period, DEFENDANT negligently misrepresented material facts regarding C.B.'s health, history, and behavior, as required by the provisions of the Florida Statutes and the Florida Administrative Code, including, but not limited

to: §§ 63.039, 63.085, and 63.125, Florida Statutes, and Rules 65C-15.028, 65C-15.029, 65C-15.031, 65C-16.002, 65C-16.009, 65C-16.010, and 65C-16.013, Florida Administrative Code.

30. DEFEENDANT negligently misrepresented facts to K.B. and L.B. which DEFENDANT knew or should have known to be false by failing to disclose the aforementioned special needs of the child.

31. In making negligent misrepresentations regarding the suitability of C.B. for adoption, DEFENDANT intended that the adoptive parents, K.B. and L.B., would rely on said misrepresentations and the lack of complete information in making their decision to adopt C.B.

32. Accordingly, in justifiably relying upon DEFENDANT's negligent misrepresentations and negligent failure to provide complete disclosures regarding C.B., the adoptive parents, K.B. and L.B., failed on said information, and lack thereof, and finalized the adoption of C.B.

33. As a result of DEFENDANT's negligent misrepresentations, K.B. and L.B., sustained damages including, but not limited to, mental anguish, loss of capacity for the enjoyment of life, expenses of psychiatric and psychological therapy, loss of the ability to earn money, and the unnecessary, inappropriate delay in treating the conditions of C.B., thereby compounding the situation and depriving K.B. and L.B. of what otherwise would have been a more normal existence. The losses are permanent and continuing and the Plaintiffs will continue to suffer the losses in the future.

WHEREFORE, Plaintiffs demand judgment for damages against DEFENDANT for compensatory damages, costs, and all other such relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demand trial by jury of all issues triable by a jury.

Respectfully submitted this 25<sup>th</sup> day of October, 2010.

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